

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB JERMAINE MYERS,

Defendant.

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Case No. 12-CR-0196-02-CVE

OPINION AND ORDER

Now before the Court is defendant Kaleb Jermaine Myers' motion requesting a Daubert hearing (Dkt. # 28). Myers and a co-conspirator, Julien Lee Hale, are charged with conspiracy to commit robbery (count one), robbery (counts two and four), and possession of a firearm in furtherance of a crime of violence (counts three and five). Dkt. # 13. Myers asks the Court to consider whether the plaintiff's fingerprint examiner Michelle Gorges is qualified and whether the methodology utilized in comparing fingerprints is supported by an Office of the Inspector General (OIG) report entitled: A Review of the FBI's Progress in Responding to the Recommendations in the Office of the Inspector General Report on the Fingerprint Misidentification in the Brandon Mayfield Case. Dkt. # 28, at 4; Dkt. # 28-1.

Myers states that the facts of the case are as follows: two Kum and Go convenience stores were robbed, and the robberies were captured on in-store video equipment. During each robbery, three people entered the store, and at least one person was carrying a firearm. All three people are masked. Myers states that fingerprint evidence will therefore be crucial in identifying the three people.

Prior to expressing an expert opinion, the witness must be qualified as an expert and have knowledge of the area about which that expert testifies. Pursuant to Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589 (1993), the Court must also act as a “gatekeeper” and should assess the reliability, including the methodology, of an expert. A Daubert hearing is a vehicle to challenge the qualifications of the proposed expert witness and the methodology used to arrive at the opinion.

IT IS THEREFORE ORDERED that defendant Kaleb Jermaine Myers’ motion requesting a Daubert hearing (Dkt. # 28) is **granted**. The proposed expert testimony of Michelle Gorges is set for a Daubert hearing as to her qualifications and the methodology utilized by her in comparing fingerprints in this case. The Daubert hearing shall coincide with the pretrial conference set **December 7, 2012 at 9:30 a.m.** It is incumbent on defense counsel to arrange for the expert’s presence, if required.

DATED this 28th day of November, 2012.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE